IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 230 OF 2006

M/s. TBS Engineers Pvt.Ltd. ... Petitioners.

V/s.

M/s. D.S. Gupta Construction Pvt. Ltd. ... Respondents.

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Mr. R.D. Soni i/b. Ram & Co. for the Petitioners.
Mr. Girish Godbole with D.G. Dharne i/b. M.V. Kini & Co. for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

26th April 2007.

P.C. :

. The claim in the Company Petition is on account of monies due at the foot of an account for goods sold, supplied and delivered under 5 invoices. The Petitioner has also instituted a suit on 8th December 2005 before the District Judge, Delhi for the recovery of its dues. Undoubtedly, the institution of a suit does not bar the maintainability of a Company Petition for winding up because the Petition for winding up is founded on the premise that the Company is unable to pay its debts. However, from the reply filed to

this proceedings, it would emerge that the Company has a valid and triable defence on the question of limitation. Admittedly, the invoices are of the period between 13th December 2000 and 26th February 2001. The last payment of Rs.1.5 lakhs was made on 28th September 2002. The suit before the Civil Court at Delhi was instituted on 8th December 2005 while the Company Petition for winding up was instituted on 15th December 2005. Having regard to the aforesaid facts, it would be inappropriate for this Court to exercise the jurisdiction for winding up the Respondent.

2. Having regard to the defence of limitation which raises a triable issue, it cannot be stated that there is a debt due and payable. The Company Petition is accordingly dismissed. However, it is made clear that none of the observations contained in the present order would amount to an adjudication on the rights and contentions of the parties which would be carried out in the Civil Suit.